

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 798 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PRAKASHCHANDRA NAGINDAS SHAH

Appearance:

MS BR GAJJAR, ADDL.PUBLIC PROSECUTOR for appellant
MR MJ BUDDHBHATTI for Respondent

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.R.TRIPATHI

Date of decision: 28/09/1999

ORAL JUDGEMENT (per M.R.Calla, J.)

This State appeal is directed against the
acquittal of the two respondents, namely, Prakashchandra
Nagindas Shah and Kantilal Somabhai Chunawala, as ordered
by the Special Judge, Baroda in Special Case No.4 of 1985
decided on 8th April 1986 whereby the two respondents had

been acquitted of the offences under Sec.161 of IPC read with Sec.5(1)(d) and 5(2) of the Prevention of Corruption Act.

2. At the relevant time, respondent no.1 Prakashchandra Shah was working as Talati-cum-Mantri and respondent no.2 Kantilal Chunawala as the Clerk to collect the tax. The incident took place on 7th March 1984 in the afternoon in the office of the Gram Panchayat Kandari. The prosecution came with the case that the respondent no.1 Talati-cum-Mantri had demanded a sum of Rs.500/- from Bipinbhai Chaturbhai Patel of Kandari as bribe to settle the case of felling of the trees. The amount in question is said to be demanded by the respondent no.1 to be collected through respondent no.2 from said Bipinbhai who had cut the trees from his own field without the permission of the Forest Department. It was alleged in the prosecution case that on 27th February 1984 the complainant Bipinbhai through the labourer employed by him had cut two mango trees in his field and had collected the wood at about 10.30 a.m. On that day, while labourers Raiji and Kesur were present, the respondent no.1 and one Shri Vithalbhai, Pattawala of Kandari Gram Panchayat reached the spot and in presence of the two labourers took into custody the implements by which the trees had been cut down including two Kuhadies, one Trikam, one Pavda, and one Thagara. The respondent no.1 along with two other labourers were taken to the office of the Panchayat and their statements were recorded. The two labourers were detained in the Panchayat for about two hours along with the respondent no.1 and thereafter they were let go. On the following day, i.e. 28th February 1984, a demand was made for a sum of Rs.500/- when the complainant met the respondent no.1 in the office at about 11.30 a.m. and at that time, the complainant promised to make the payment. Thereafter on 6th March 1984, the respondent no.1 gave a notice through Vithalbhai, Pattawala for the felling of the trees. The complainant did not accept the notice and went to the office of the Panchayat and offered him to pay Rs.150/- and the respondent no.1 agreed to the same. On 7th March 1984, the complainant approached the Anti Corruption Department and gave the complaint to the Police Inspector Shri Mehta and after registering the complaint, the Inspector called the panchas and a currency note of Rs.100/- and another currency note of Rs.50/- as were produced by the complainant upon which the Anthracene powder was applied and the ultra violet lamp was operated by the Head Constable Purshottambhai. Thereafter, the currency notes as aforesaid were put in the pocket of the complainant's bush shirt and the trap

was laid. The complainant and the panchas were present and Inspector Shri Mehta and the other members of the raiding party went to Kandari in a jeep. The complainant and the panch no.1 first went to the office of the Kandari Panchayat and the panch no.2 and the other members of the raiding party remained around the office of the panchayat. In the office of the panchayat, the respondent no.2 was sitting on a cot and was making some entries in a book. The complainant gave the aforesaid notes to the respondent no.2 who was sitting on the cot and the respondent no.2 placed the same on the mattress lying nearby. At that time panch no.1 went out and gave signal to the members of the raiding party and thereupon the members of the raiding party and the Inspector Shri Mehta came down who found the currency notes on the mattress and took the same into their possession. They also recovered the notice which had been given to the complainant by the respondent no.1 and also recovered the ball pen and the book No.7/12 from the respondent no.2. The ultra violet lamp was also made use of at that time and the effect of the Anthracene powder was seen on the fingers of the right hand of the complainant and thereafter same effect was also noticed on the hand of the respondent no.2 through ultra violet lamp as also the impression of Anthracene powder where the currency notes had been placed. The panchnama was prepared in presence of the Investigation Officer, i.e. Inspector Shri Mehta and the statements of the panchas were recorded and after completing the investigation, the chargesheet was filed in the Court of Special Judge, Vadodara and the respondents nos.1 and 2 were prosecuted accordingly and were made to face the trial as they denied the charge. In the course of trial, the prosecution has examined Bipinbhai Chaturbhai as PW1, Maganbhai Bhulabhai as PW2 and Shri P.P.Mehta, i.e. Investigation Officer as PW3. The defence has examined Nareshbhai Maljibhai as DW1.

3. We have heard learned Addl.Public Prosecutor and learned Counsel Mr.Buddhabhatti for the respondent no.1. No one has appeared for the respondent no.2. We have gone through the impugned judgment and the other papers. Even if we ignore the contradictions and discrepancies in the evidence, we find that Shri Chaturbhai, i.e. father of the complainant who was present and who was an important witness has not been examined by the prosecution. Similarly, yet another very important witness, namely, Ishwarbhai who was the Sarpanch of the Gram Panchayat, Kandari has not been examined. The omission to examine these two important witnesses is certainly fatal to the case of the prosecution and the non-examination of these two witnesses assumes greater

importance in the light of the defence which has been set up in this case. The defence has come out with the case that the amount was due to be recovered from the complainant against the tax to the tune of Rs.179/- and it has been stated that the complainant had come to deposit the amount of Rs.150/- on 7th March 1984 against the dues of Rs.179/- and the rest of the amount of Rs.29/- was deposited by him later on and for both these deposits, the receipts had been issued and the amount had been deposited in the funds of the Panchayat. This defence also appears to be plausible and has been believed by the trial Court and we do not find that the trial Court has committed any error in believing this version for the simple reason that the respondents have admitted that the amount of Rs.150/- was lying and was taken by the raiding party and the said amount of Rs.150/- was lying on the mattress near the concerned Clerk, i.e. respondent no.2 and he was within his rights to accept this amount against the outstanding dues of Rs.179/-. We further find that there is documentary evidence in support of the defence evidence, a bill Exh.25 for the sum of Rs.179/- in the name of Shri Chaturbhai, i.e. father of the complainant which has been placed on record as was issued by the office of the concerned Gram Panchayat under the signatures of Talati-cum-Mantri and this bill bears the date of 29th December 1983. This is further supported by the document Exh.26 on record which is a receipt for a sum of Rs.29/- as issued by the Gram Panchayat on 26th September 1984. The date of the bill is prior to the date of the incident and the date of the receipt for sum of Rs.29/- is subsequent to the date of the incident and it is the case of the defence that the receipt of Rs.150/- was torn up. The factum that a sum of Rs.179/- was outstanding against the complainant's father has not been disputed. In this view of the matter, even if it is taken that the respondent no.2 had accepted the currency notes of Rs.150/- on the date of the incident and that the effect of Anthrocene powder and the ultra violet lamp was seen on that, it would not make any difference because the amount in question was against the payment for the dues as per the bill which has been issued in the year 1983. In the facts and circumstances of this case, if the evidence brought on record including the documentary evidence by the defence is sifted against the oral evidence of the prosecution, the case set up in the defence appears to be plausible and it certainly renders the prosecution case to be vulnerable. It is also a fact that the notice had been issued to the complainant by the respondent no.1 who is Talati-cum-Mantri with regard to the case of felling of the trees.

4. For the reasons as aforesaid, we find that the order of acquittal as has been passed by the trial Court does not warrant any interference. There is no merit in this appeal. The same is hereby dismissed.

Sreeram.